

# RESOLUTION NO. 3744

## A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND THE U.S. DEPARTMENT OF VETERANS AFFAIRS FOR RSVP OFFICES

*WHEREAS*, the City of Miles City has accepted sponsorship of the operation of the Retired and Senior Volunteer Program (RSVP) for FY2014-2015, and anticipates sponsoring RSVP for the foreseeable future;

*AND WHEREAS*, the RSVP program wishes to enter into a lease with the U.S. Department of Veterans Affairs for the continued use of the RSVP program offices;

*AND WHEREAS*, the lease agreement presented by the Department of Veterans Affairs is for a term of 36 months, from October 1, 2014 to September 30, 2017, which is satisfactory and agreeable to the City Council;

*NOW THEREFORE BE IT RESOLVED* by the City Council of Miles City, Montana, as follows:

It does hereby authorize and approve the terms of the proposed Lease between the City and the Department of Veterans Affairs, Lease No. V436OL-15-13MC, attached hereto as Exhibit "A," and hereby authorizes the Mayor of the City of Miles City to execute such lease agreement, and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2014.**

  
\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

  
\_\_\_\_\_  
Lorrie Pearce, City Clerk



**Department of Veterans Affairs**

**LEASE**

**LEASE NO. V436OL-15-13MC**

1. THIS LEASE for property located at DEPARTMENT OF VETERANS AFFAIRS VA MONTANA HEALTHCARE SYSTEM, Miles City CBOC and CLC, 210 S. Winchester Avenue, Miles City, MT is made and entered into this 1st day of October, 2014, by and between the CITY OF MILES CITY (RSVP) whose address is ATTN: Mayor City of Miles City, P.O. Box 910, MILES CITY, MT 59301, for its heirs, executors, administrators, successors, and assigns, hereinafter referred to as the Lessee.

2. WITNESSETH: The parties hereto for the consideration hereinafter mentioned do covenant and agree as follows:

a. The Government hereby leases to the Lessee the following described premises, hereinafter referred to as the Leased Premises:

Room 412 (154 usable square feet), Room 413 (115 usable square feet), and Room 414 (151 usable square feet) located in Building 1 of the Miles City VA complex located at 210 S. Winchester Avenue, Miles City, MT 59301

To be used exclusively for the following purpose(s):

Administrative and operating space for Retired Senior Volunteer Program

b. TO HAVE AND TO HOLD the said premises with their appurtenances for the term of 36 months, beginning October 1, 2014 and ending September 31, 2017.

3. That the Lessee shall pay to the government rental in the amount of \$350.00 per month (\$10.00 per square foot) payable in advance OR other consideration as provided for by section 8122, title 38, United States Code, and the Lessee shall pay to the Government on demand any sum which may have to be expended after the expiration or termination of this lease to restore the premises to the condition required by Clause No. 20, hereof. Any monetary compensation shall be made payable to the Treasurer of the United States and forwarded by the Lessee directly to the Agent Cashier (04), VA Medical Center, 3687 Veterans Drive, Fort Harrison, MT 59636.

4. That all notices to be given pursuant to this lease shall be addressed, if to the Lessee to:

Mayor, City of Miles City  
P.O. Box 910  
Miles City, MT 59301

if to the Government to the Facility Director:

Medical Center Director (00)  
VA Montana Healthcare System  
3687 Veterans Drive  
Fort Harrison, MT 59636

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, addressed as aforesaid and deposited, postage prepaid, in a public mail box maintained by the U.S. Postal Service.

5. That the use and occupancy of the leased property shall be subject to the general supervision and approval of the VA Medical Center Director (00), VA Montana Healthcare System, 3687 Veterans Drive, Fort Harrison, MT 59636, and to such rules and regulations as may be prescribed by the Director from time to time.
6. That the Lessee has inspected and knows the condition of the leased property, and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.
7. That no alterations shall be made or improvements installed in the demised premises by the Lessee without the prior written consent of the Government.
8. That the Lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.
9. That the right is hereby reserved to the Government, its officers, agents, and employees to enter upon said premises at any time for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interests of the Government and the Lessee shall have no claim of any character on account thereof against the Government or any officer, agent, or employee thereof.
10. That the Lessee shall pay the cost, as determined by the VA Medical Center Director, of producing and/or supplying any utilities (the utilities listed in paragraph 27(a) of this Lease are excepted, as the monthly lease payment includes the paragraph 27(a) utilities at no extra charge) and other services furnished by the Government. The Government shall be under no obligation to furnish utilities or services other than those listed in paragraph 27(a) of this Lease. Payment shall be made in the method prescribed by the VA Medical Center Director upon bills rendered monthly.
11. That the Lessee shall neither transfer nor assign this Lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease without prior permission in writing from the Government.
12. That this lease may be terminated by either party upon thirty (30) days notice computed from the date of mailing, in accordance with Clause No. 4.
13. That in the event the Government terminates this lease or in any other manner materially reduces or increases the area covered thereby prior to the date of expiration thereof, an equitable adjustment in the rental paid or thereafter to be paid under this lease shall be made.

14. That if the said premises are totally destroyed by fire or other casualty, this lease shall immediately terminate. In case of partial damage or destruction, so as to render the premises untenable, Lessee may terminate this lease in its entirety by serving written notice upon the Government within thirty (30) days or in part, by supplemental agreement hereto if approved by the Government, in accordance with Clause No. 4.
15. That for such period as the Lessee is in possession of the leased premises pursuant to the provisions and conditions of this lease, in the event that the Lessee is the sole or primary occupant of the leased premises the Lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. In the event the Lessee only occupies a portion of the structure where other tenants exist and/or where VA conducts other non-related functions, the Lessee is only required to furnish fire legal liability insurance. The Lessee shall procure such insurance from any responsible company of companies, and furnish either the original policy or policies or certificates of insurance to the Government. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government. Nothing herein shall be construed as an obligation upon the Government to repair, restore, or replace the Leased Premises, or any part thereof.
16. That the lessee shall obtain and keep in force and effect public liability insurance coverage in the minimum amounts of \$500,000.00 to protect the Government from third party property damage and bodily injury claims arising out of use of the property by the lessee. Evidence of such insurance coverage shall be furnished to the Government upon request.
17. That the Government shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the Lessee, or for injuries to the person of the Lessee (if an individual), or for damages to the property or injuries to the person of the Lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from governmental activities, and the Lessee shall indemnify and hold the Government harmless from any and all such claims.
18. That any property of the Government damaged or destroyed by the Lessee incident to the Lessee's use and occupation of the said property shall be promptly repaired or replaced by the Lessee to the satisfaction of the VA Medical Center Director, or in lieu of such repair or replacement the Lessee shall, if so required by the VA Medical Center Director, pay to the Government, money in an amount sufficient to compensate for the loss sustained by the Government by reason of damages to or destruction of Government property.
19. That the Lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or similar substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures.
20. That, on or before the date of expiration of this lease, or its termination by the Lessee, or its revocation by the Government, the Lessee shall vacate the demised premises, remove the

personal property of the Lessee therefrom and at the option of the Government, remove the fixtures therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the Lessee and due to fair wear and tear excepted.

21. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

22. That the Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

23. If this lease has been negotiated without advertising the Lessee agrees that the Comptroller General of the United States, the Secretary of Veterans Affairs, or any of their duly authorized representatives shall, until the expiration of 3 years after final payment under this lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to this lease. The Lessee further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, the Secretary of Veterans Affairs, or their representatives shall, until the expiration of 3 years after final payment under this lease with the Government, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract.

24. That the Lessee shall pay to the proper authority, when as the same becomes due and payable, all taxes, assessments, and similar charges, which at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the Lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the Lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments or similar charges which were imposed upon such Lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that in the event that the parties thereto are unable to agree within 90 days from the date of the imposition of such taxes, assessments, or similar charges, on a rental which in the opinion of the said officer, constitutes a reasonable return to the Government on the leased premises, then in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the Lessee subject to appeal in accordance with Clause No. 25 of this lease.

25. Contract Disputes Clause: This lease shall be subject to the provisions of Federal Acquisition Regulation Section 52-233-1, Disputes, which is attached hereto and made a part hereof as Addendum 1.

26. Any activity, program, or use made of the property by the Lessee will be in compliance with the provisions of Federal Acquisition Regulation Section 52.222-26, Equal Opportunity, which is attached hereto and made a part hereof.

27. That this lease is further subject to the following provisions and conditions:

- a. VA will provide electricity, water, heat, sewage, engineering services (power, ventilation, exhaust, and plumbing), emergency first response police services provided by the Miles City Police Department and trash removal from a central point and appurtenances. Fire protection services are provided by Miles City Fire Department.
- b. Lessee will provide custodial services for space occupied by Lessee.
- c. Lessee will have key access for the space; VA will have access to the space at all times and reserves the right to inspect space as necessary in order to provide all other labor, materials, and equipment to maintain the integrity and safety of the space subject to the following consideration:  
  
All non-attached equipment or supplies necessary to sustain and/or enhance Lessee operation shall be the sole responsibility of the Lessee for acquisition and maintenance. Equipment and other assets acquired by Lessee are wholly owned by Lessee and VA shall make no claims of ownership on such assets. Any assets provided by the VA shall remain the property of the VA. Lessee shall maintain any assets provided by the VA.
- d. Lessee shall provide telephone lines to include telephone service, equipment, maintenance, adds, moves, and changes. Lessee shall be responsible for payment of phone utilities. Existing telecommunication infrastructure may be used with the express permission of the VA.
- e. Lessee shall not display any signage on anyplace exterior to Building 1, including any and all of the VA Medical Center Grounds without prior approval of the Medical Center Director.
- f. Parking for Lessee employees and visitors is restricted to the parking spaces around Building 1 on a first come first served basis. The Medical Center Director has unilateral authority to further restrict Lessee parking upon notice in writing.
- g. PAYMENT: Payment of sums due the VA for rent will be paid monthly, in advance. Payment will be made payable to Department of Veterans Affairs. For your convenience, all rental payments under this lease may be sent to:

VA Montana Healthcare System  
Agent Cashier (04)  
210 S. Winchester Ave.  
Miles City, MT 59301

All other payments shall be forwarded to the Agent Cashier pursuant to the provisions herein. Any payment not received by VA within 30 days may result in cancellation of services, at the discretion of the Medical Center Director.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

UNITED STATES OF AMERICA

LESSEE

By

By

  
\_\_\_\_\_  
John V. Ginnity  
Acting Medical Center Director  
VA Montana Healthcare System

  
\_\_\_\_\_  
C.A. Gentry  
Mayor  
City of Miles City

  
\_\_\_\_\_  
Lance Pearce  
Witness

(If Lessee is a corporation, the following certificate shall be executed by the secretary or assistant secretary).

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_

Secretary of the Corporation named as Lessee in the attached lease; that who signed said lease on behalf of the Lessee, was then of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(CORPORATE SEAL)

## ADDENDUM I

### CONTRACT DISPUTES CLAUSE

#### FEDERAL ACQUISITION REGULATION PART 52.233-1(DISPUTES (JULY 2002)

As prescribed in 33.215, insert the following clause: **DISPUTES (7/02)** (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C.601-613). (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause. (c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time. (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer. (2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000. (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects that contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor." (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim. (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims of over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made. (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act. (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer. (h) The government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claim shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. (End of clause) *Alternate 1 (Dec 1991)*. As



prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause: (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer. [FAC 84-23, 51 FR 36972, 10/16/86, effective 9/30/86; Interim rule, FAC 90-10, 56 FR 67417, 12/30/91, effective 12/30/91; FAC 90-20, 59 FR 11368, 3/10/94, effective 3/10/94, finalized without change, FAC 90-39, 61 FR 31612, 6/20/96, effective 6/20/96; FAC 90-32, 60 FR 48206, 9/18/95, effective 10/1/95; FAC 97-9, 63 FR 58587, 10/30/98, effective 12/29/98; FAC 2001-08, 67FR 43513, 6/27/2002, effective 7/29/2002]

## Addendum II

### 52.222-26 -- Equal Opportunity.

#### Equal Opportunity (Mar 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)

(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to --

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared

ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of Clause)

## RSVP request for 4<sup>th</sup> floor space

ROOMS ON 4<sup>TH</sup> FLOOR:

412 = 154 sq ft

413 = 115 sq ft

414 = 151 sq ft south side of the 4<sup>th</sup> floor 456 square footage